

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

SPRINGFIELD TOWNSHIP SITE

Davisburgh, Michigan

Respondents:

Listed in Attachment C

Docket NO.

ADMINISTRATIVE ORDER BY
CONSENT PURSUANT TO
SECTIONS 104, 106 AND 122
OF THE COMPREHENSIVE
ENVIRONMENTAL RESPONSE,
COMPENSATION, AND
LIABILITY ACT OF 1980 as
amended, 42 U.S.C. Section
9604, 9606, AND 9622.
MARCH 10, 1992

136151
V-W-92-C-146

ADMINISTRATIVE ORDER ON CONSENT
REGARDING SELECTED RESPONSE ACTIVITIES

The United States Environmental Protection Agency (EPA) and the Respondents have each agreed to the making and entry of this Administrative Order by Consent (Order).

JURISDICTION

1. This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9604, 9606 and 9622 as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

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*Attachments
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-2-

Order or its terms, or the EPA's authority or jurisdiction to issue or enforce this Order.

II. NOTICE TO STATE

1. A copy of this Order will also be provided to the State of Michigan, which has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

III. STATEMENT OF PURPOSE

1. The objectives of this Order and the mutual objectives of the EPA and the Respondents in entering into this Order, are for the Respondents to, in accordance with the Scope of Work (SOW) attached as Attachment B: 1. design ground water and soil vapor extraction and treatment systems; 2. complete pilot scale testing of the ground water and soil vapor extraction and treatment systems; 3. extend the fence around the source areas at the site and maintain it during the life of this Order. It is the further objectives of EPA to recover future response costs incurred by EPA at the site and for the Respondents to pay future response costs consistent with the terms of this Order. The response action activities required by this Order will be conducted consistent with the September 29, 1990 Record of Decision issued for this site and the attached SOW.

IV. PARTIES BOUND

1. This Order applies to and is binding upon the EPA and any successor Agency and the Respondents and their successors and assigns. The undersigned representative of each Party certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of this Order and to execute and legally bind that Party to it. Respondents shall provide a copy of this Order, including its appendices, to the contractor(s) hired to perform the Work required by this Order and shall require the contractor(s) to provide written notice of this Order to any subcontractor retained to perform any part of the Work required by this Order.

2. By entering into this Consent Order, Respondents do not admit any legal or equitable liability under any federal, state or local law in connection with this Consent Order. Respondents reserve the right to contest in any subsequent proceeding, other than a proceeding to enforce this Consent Order, the validity of any factual or legal determinations made herein. By entering into this Consent order, Respondents do not admit that any release or threatened release has occurred or that an imminent and substantial endangerment to the public health or welfare or

the environment exists at the Facility. By entering into this Consent Order, Respondents do not waive any rights to challenge the implementation or selection of the portions of the remedy selected in the Record of Decision not covered by this Order. Respondents have stipulated to the entry of this Consent Order in recognition of their status as Potentially Responsible Parties (PRPs) at the Facility in order to compromise disputed claims.

V. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Clean-up standards" mean the requirements respecting the degree of clean-up of groundwater, surface water, soil, air or other environmental media that must be achieved by the remedial action selected for the site as set forth in the Record of Decision, this Order and the SOW.

"Order" shall mean this Order and all appendices attached hereto (listed in Section VIII.Y). In the event of conflict between this Order and any appendix, this Order shall control.

"Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"MDNR" shall mean the Michigan Department of Natural Resources and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, incurred subsequent to the effective date of this Order and prior to termination of this Order consistent with the NCP including, but not limited to, direct and indirect costs, that the United States incur(s) in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs and the costs incurred pursuant to Sections VIII.C (Access) and K (Additional Removal Actions).

"Interim Milestone" for the purposes of Section H, Paragraph 14(e) shall mean any and all work activities listed in § V (Submission Summary) of the attached Scope of Work excluding the

Final Design (100%) Specifications and Drawings and the installation and maintenance of the site fencing.

"National contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the response action, approved or developed by EPA pursuant to this Order and the Statement of Work (SOW).

"Paragraph" shall mean a portion of this Order identified by an arabic numeral or a lower case letter.

"Parties" shall mean the EPA and the Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States Environmental Protection Agency incurred and paid with regard to the Site prior to the effective date of this Order.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD, this Order and the attached SOW.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Springfield Township Site and signed on September 29, 1990, by the Regional Administrator, EPA Region V, and all attachments thereto.

"Removal" shall mean those activities to be undertaken by the Respondents to implement the requirements of this Order and the Scope of Work. Section II of the Scope of Work lists the removal activities required by this Order.

"Response Activity" or "Selected Response Activity" - shall have the general meaning ascribed to it in the National Contingency Plan and Section 101(25) of CERCLA and for the purposes of this Order, shall include the removal activities listed in Section II of the attached Scope of Work.

"Respondents" shall mean those Parties identified in Attachment C.

"Scope of Work" or "SOW" shall mean the statement of work for implementation of the Response Activities for the Site, as set forth in Attachment B to this Order and any modifications made in accordance with This Order. The SOW is incorporated by reference into this Order and is a fully enforceable part of this Order.

"Section" shall mean a portion of this Order identified by a roman numeral or upper case letter.

"Site" or "Facility" shall mean the Springfield Township Superfund site, encompassing approximately 16 acres, located at 12955 Woodland Trail near the city of Davisburg, Oakland County,

Michigan and depicted generally on the map contained in Attachment B.

"State" shall mean the State of Michigan.

"TCLP" shall mean the Toxicity Leaching Procedures as set forth in the March 29, 1990 Federal Register (55 FR 11798).

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and any hazardous substance under State law.

"Work" shall mean all activities Respondents are required to perform under this Order, except those required by Section VIII.E. (Document Retention).

"Work Plan" shall mean the document submitted by the Respondents pursuant to Paragraph VIII.A. of this Order and described more fully in Paragraph VIII.A.3 of this Order and in the attached SOW as the Final Response Action Activities Work Plan.

VI. FINDINGS

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The Springfield Township site is located at 12955 Woodland Trail, Davisburg, Michigan in an area of mixed residential and agricultural use. The site is located within a 16 acre parcel of land which is located south of the town of Davisburg.
2. Joseph and Clara Nickson are the title record owners of the site property. Joseph and Clara Nickson are deceased with the property presently in possession of their daughter Corrine Nickson. Joseph and Clara Nickson occupied and/or owned the site since approximately 1958.
3. During the period that Joseph Nickson owned or occupied the site, the site received industrial, solid and liquid wastes.
4. In 1983, (48 Fed. Reg. 40671, September 8, 1983), pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Springfield Township site on the National Priorities List, set forth at 40 CFR Part 300, Appendix B.
5. The Remedial Investigation/Feasibility Study and ROD for the Site demonstrate that hazardous substances are present at the Site, and that the presence of such substances constitutes an actual or threatened release, as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22). The RI/FS indicates that under present and future

- potential conditions on-site for exposure to contaminated soils, four chemicals (PCBs, dieldrin, arsenic, and trichloroethene) have incremental cancer risks within or above the target range of 1×10^{-4} to 1×10^{-6} and four chemicals (chlorobenzene, toluene, barium, and lead) pose a potentially significant risk of non-carcinogenic adverse effects under realistic worst case conditions.
6. The Respondents may have generated and by contract, agreement or otherwise, arranged for disposal or treatment of hazardous substances owned or possessed by Respondents, which may have been ultimately disposed of at the Site.
 7. Based on the results of the RI/FS and the public comments received by EPA pursuant to Section 117 of CERCLA, 42 U.S.C. 9617, EPA signed a Record of Decision (ROD) on September 29, 1990. That ROD established clean-up levels for the contaminants found in the soil and groundwater and specified the method for achieving those levels (selected remedy).
 8. The selected remedy for the site clean-up consisted of, but was not limited to: excavation and on-site thermal destruction (incineration) of soils contaminated with PCBs, volatile organic compounds (VOCs) such as chlorobenzene and trichloroethane, and semi-volatile organic compounds (SVOCs) such as, phthalates and polynuclear aromatics and pesticides; solidification, prior to on-site disposal, of any incinerator ash, and contaminated soils that fail the TCLP; solidification of soils which contain only metals in excess of the clean-up levels; installation and operation of an in-situ vacuum extraction system to remove VOCs and SVOCs, and treatment of the off-gases of such vacuum extraction systems; installation and operation of an on-site groundwater extraction and treatment system using activated carbon units; maintenance of the existing fence and, if necessary, extension of the existing site fence to secure the site during remediation.
 9. Negotiations for implementation of the selected remedy by the Respondents pursuant to Section 122 of CERCLA, 42 U.S.C. Section 9622, ended on February 11, 1991 without a mutually acceptable agreement for the Respondents to implement the selected remedy and achieve the clean-up levels specified in the ROD. Pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), EPA notified the Federal Natural Resource Trustee of the existence of those negotiations prior to conducting the negotiations.
 10. During the summer of 1991 EPA collected additional soil and groundwater samples at the site (field sampling). As a result of those field sampling activities EPA detected

contaminated soils outside the perimeter of the fenced area; VOCs at a broader vertical and lateral placement than detected in the RI/FS; PCBs at greater depth and lateral placement than detected in the RI/FS; and groundwater contamination which may be more extensive than previously detected in the RI/FS. The data from the field sampling activities supporting these findings is contained in the Remedial Design Investigation Report and Pre-design Report which are located in the Administrative Record file for this site.

11. Groundwater extraction and treatment and soil vapor extraction and treatment were the remedies selected in the ROD for the contaminated groundwater and VOC contaminated soils. The removal activities required by the attached Scope of Work will be consistent with the ROD-selected remedies for the contaminated ground water and the VOC contaminated soils at the site and, if properly performed, may expedite implementation of the ROD-selected remedial action. Implementation of the treatment systems for the contaminated groundwater and VOC contaminated soils and other portions of the ROD-selected remedial actions will be covered in a separate action.
12. The removal activities required by this Order will not fully remediate or abate all of the hazards presented to human health or the environment at this site because this Order does not require implementation of the remedial actions identified in the ROD.
13. The removal activities required by this Order are necessary due to the present and potential risks at the site; and the results of the 1991 field sampling activities; and the need for EPA to review those results.
14. The actions required by this Administrative Order are necessary to protect public health or welfare or the environment, and are consistent with the National Contingency Plan, 40 CFR Part 300 et seq., as amended.

VII. DETERMINATIONS

Based on the foregoing Findings, EPA has determined that:

1. The Springfield Township site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

3. Each of the Respondents named in this Order may be liable pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607(a).
4. PCBs, dieldrin, arsenic, trichloroethene, lead, chlorobenzene, toluene, barium and the other contaminants found in the soil and/or groundwater at the Springfield Township site are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. The presence of these contaminants in the soil and groundwater at the Springfield Township site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of hazardous substances from the facility, as well as the presence of some of these contaminants in the surface soils outside of the fenced area may present an imminent and substantial endangerment to the public health, welfare, or the environment.
7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment.
8. Based on the information presently available to EPA, EPA believes that the Respondents will promptly and properly complete the removal activities required by the Scope of Work. Furthermore, the actions required by this Order are in the public interest and are consistent with CERCLA and the NCP.

VIII. ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a), 104 and 122 of CERCLA, 42 U.S.C. Section 9606(a), 9604 and 9622 it is hereby ordered and agreed that Respondents will undertake the following actions at the Facility:

A. WORK TO BE PERFORMED

1. a. The Respondents shall finance and perform the Work in accordance with this Order and all plans, standards, specifications, and schedules set forth in the SOW or developed by the Respondents and approved by EPA pursuant to this Order. The Respondents shall also reimburse the United States for Future Response Costs as provided in this Order.
- b. The obligations of Respondents to finance and perform the Work and to pay amounts owed the United States under this

Order are joint and several. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements. Nothing contained in this Order shall operate to preclude the Respondents' enforcement of any allocation agreement between and among themselves.

2. Within 45 calendar days after the effective date of this Order, the Respondents shall submit to EPA and MDNR, for approval by EPA, with consultation from MDNR, a draft Work Plan for the selected response activities ordered as set forth in the SOW and this Order. The draft and final Work Plans shall require the Respondents to perform, and complete all activities required by this Order and its SOW within the time periods approved by EPA. Unless otherwise directed by EPA, the Respondents shall not commence field activities until written approval by EPA of the final Work Plan. The draft and final Work Plans shall provide a concise description of the activities to be conducted to comply with the requirements of this Order and the SOW. The draft and final Work Plans shall be reviewed by EPA, with consultation from the State. EPA may approve, disapprove, require revisions, or modify the draft or final Work Plans. If the EPA disapproves and/or requires revisions to the draft or final Work Plans Respondents shall, within the time period specified in the SOW submit an approvable final Work Plan. Respondents shall implement the final Work Plan as finally approved by EPA, including any modifications. Once approved, the final Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

3. The final work plan shall contain, among other items identified in the SOW, a site safety and health plan, and a schedule of the work to be performed in accordance with the SOW. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910, and shall incorporate the applicable training requirements of 29 CFR 1910.120(e), as interpreted by OSHA. The final work plan and other submitted documents shall demonstrate that the Respondents can properly conduct the actions required by this Order and that the work performed under this Order shall meet the requirements set forth in the SOW.

4. Upon EPA's approval of the final Work Plan, Respondents shall implement the final work plan as approved or modified by EPA and in accordance with the schedule approved by EPA. Failure of the Respondents to properly or timely implement all aspects of the final Work Plan shall be deemed to be a violation of the terms of this Order.

5. a. All activities undertaken by Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Order, if approved by EPA, shall be considered to be consistent with the NCP.

b. As provided in Section 121(e) of CERCLA and §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

c. The Respondents may seek relief under the provisions of Section VIII.N. (Force Majeure) of this Order for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

d. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

e. Respondents may submit any disapproval, modification or condition of approval to which they object to dispute resolution consistent with the terms of this Consent Order.

B. Contractors/Project Coordinators

6. a. Respondents shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify EPA and MDNR of the name, title and qualifications of such contractor within 14 (fourteen) business days of the effective date of this Order. EPA retains the right to disapprove of any, or all, of the contractors retained by the Respondents.

b. If EPA disapproves a proposed contractor, EPA will notify Respondents in writing within 14 (fourteen) days of either: 1. receipt of the retained contractor's name, or 2. knowledge of conditions which in EPA's judgment makes the contractor no longer acceptable. In the event of a disapproval, the Respondents shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 10 (ten) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an approval to proceed with respect to any of the other contractors. Respondents may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within five (5) days of EPA's approval to proceed.

c. If EPA fails to provide written notice of its approval to proceed or disapproval as provided in Paragraph VIII.A.6.b and

this failure prevents the Respondents from meeting one or more deadlines in a plan approved by the EPA pursuant to this Order, Respondents may seek relief under the provisions of Section VIII.N. (Force Majeure).

d. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondent with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

e. Respondents retain the right to change contractors on written notice of EPA should they determine that such a change would be appropriate provided such change does not delay completion of the work required by this Order. Any proposed new contractor shall not perform any work until EPA approves of such contractor. EPA retains the right to disapprove of any successor contractors retained by the Respondents. If EPA disapproves of any contractor retained by the Respondents, EPA shall state the basis of the disapproval in writing.

7. a. Within 14 days of the effective date of this Order, the Respondents shall notify EPA in writing, of the name, address and telephone number of their designated Project Coordinator and Alternate Project Coordinator. The Respondents' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Respondents' Project Coordinator shall not be an attorney for any of the Respondents in this matter. The Project Coordinator for the Respondents shall be on call throughout the pendency of this Order. Subject to advance notice to EPA and MDNR he or she may assign other representatives, including other contractors, to serve as a Site representative.

b. The EPA has designated Marilou Martin, Remedial Project Manager (RPM), as its Project Coordinator. The EPA Project Coordinator shall be responsible for overseeing the implementation of this Order. EPA may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Order. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a

-12-

RPM and an OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Order and to take any necessary response action when s/he determines that conditions at the Site may present an imminent and substantial threat to public health or welfare or the environment.

c. Provided the Respondents are in compliance with the terms of this Order, in the event that the EPA Project Coordinator halts work pursuant to this paragraph such that the Respondents' performance under this Order is materially affected, the Respondents shall be granted an extension of the schedule of work established pursuant to this Order for such period as may be necessitated by the delay resulting from the work stoppage.

d. The EPA and the Respondents shall each have the right to change their respective designated Project Coordinators. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made. Notification may initially be verbal, but shall promptly be reduced to writing.

e. To the maximum extent possible, communication between the Respondents and the EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the Project Coordinators. During implementation of the work required by this Order, the Project Coordinators shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

f. The absence of the EPA Project Coordinator shall not be cause for stoppage of work.

C. ACCESS

8. a. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondents, Respondents shall use "best efforts" to obtain all necessary access agreements for Respondents, EPA and the State and their representatives, including, but not limited to their contractors, as necessary to effectuate this Order. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access.

b. If any access required to complete the work required by this Order is not obtained within 30 (thirty) days of the effective date of this Order, or within 30 (thirty) days of the date EPA notifies the Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the EPA, and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access.

c. In the event that after using their best efforts Respondents are unable to obtain such agreements, Respondents shall immediately notify EPA and EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described in the SOW, using such means as it deems appropriate. Respondents shall reimburse EPA for all attorneys' fees, court costs and other related costs it incurs in assisting Respondents to obtain access. If, and to the extent that denial, of access will result in a delay in implementation of work under this Order, Respondents may request an extension to the schedule established hereunder, in accordance with Paragraph VIII.X of this Order.

d. Commencing upon the effective date of this Order, the Respondents agree to provide the United States, the State, and their representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Order, to the extent access to the property is controlled by the Respondents, for the purposes of conducting any activity related to this Order including, but not limited to:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or from the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents; and
- vii. Assessing Respondents compliance with this Order.

e. Notwithstanding any provision of this Order the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

f. Respondent shall permit EPA, the State and their employees, authorized contractors, agents, and consultants to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples, to monitor the work under this Order, and to conduct other activities which the EPA determines to be necessary.

D. REPORTS

9. a. In addition to any other requirement of this Order, Respondents shall submit to EPA and MDNR three (3) copies each of written monthly progress reports and other plans and reports

-14-

required by the attached Scope of Work. Respondents shall submit these progress reports and other plans and reports to EPA and the State in accordance with the schedule approved in the attached SOW. If requested by EPA, upon reasonable notice Respondents shall also provide briefings for EPA to discuss the progress of the Work.

b. The Respondents shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of final work plans, no later than seven days prior to the performance of the activity.

c. Upon the occurrence of any event during performance of the work that Respondents are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Respondents shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

d. Within 20 days of the onset of an event described in Paragraph VIII.D.9.c, Respondents shall furnish to EPA a written report, signed by the Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondents shall submit a report setting forth all actions taken in response thereto.

e. All reports and other documents submitted by Respondents to EPA (other than the monthly progress reports referred to above) which purport to document Respondents' compliance with the terms of this Order shall be signed by an authorized representative of the Respondents. For the purposes of this paragraph, Respondents Project Coordinator or the principal design contractor may be considered the Respondents' authorized representative.

E. DOCUMENT RETENTION

10. a. Respondents agree to retain for seven (7) years following completion of the activities required by this Order copies of all records, files and data relating to hazardous substances found by the Respondents on the site, or related to the activities undertaken pursuant to this Order, whether or not those documents were created pursuant to this Order. Respondents shall acquire and retain copies of all such documents that are in the possession of their contractors, agents and employees.

Respondents shall notify EPA at least sixty (60) calendar days before any documents retained under this paragraph are to be destroyed. Alternatively, Respondents may arrange with EPA to turn over the records, files and data prior to the end of seven years. The documents retained under this paragraph shall be made available to the EPA upon reasonable request, except for attorney-client or work product privileged documents.

b. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to the Respondents.

c. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide the EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

F. DATA AVAILABILITY AND QUALITY ASSURANCE

11 . a. Respondents shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent

amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Order, Respondents shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to any proceeding brought by EPA to enforce the terms of this Order, the EPA and the Respondent agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and "Contract Lab Statement of Work for Organic Analysis" dated March 1990, and any amendments made thereto during the course of the implementation of this Order. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program.

b. Upon request, the Respondents shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Respondents shall notify EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Respondents to take split or duplicate samples of any samples it takes as part of the EPA's oversight of the Respondents' implementation of the Work. EPA will use best efforts to give Respondents' Project Coordinator seven (7) days advance notice of all sampling activities. Upon request, EPA shall make available to the Respondents' Project Coordinator a copy of the final summary results of any analysis made of such samples (final sampling summary). Prior to the termination of this Order, if the Respondents' Project Coordinator requests the raw data for any U.S. EPA final sampling summary then U.S. EPA will make non-privileged data available to the Respondents' Project Coordinator.

c. Respondents shall submit to EPA and MDNR copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site during implementation of this Order and/or with respect to the implementation of this Order unless EPA agrees otherwise.

d. Notwithstanding any provision of this Order, EPA hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

12. Respondents shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities pertaining to implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the work.

G. RESPONSE COSTS

13.a. Respondents shall reimburse the EPA for all Future Response Costs. The EPA will send Respondents a bill for Future Response Costs requiring payment that includes a Cost Summary Report, or its future equivalent on a periodic basis. Respondents shall make all payments within 60 days of Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph VIII.G.13.b. The Respondents shall make all payments required by this Paragraph by certified or cashier's check made payable to "EPA Hazardous Substances Superfund" and delivered to the EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. The face of the check should note that the payment is for the Springfield Township site, Superfund Site Identification Number A7. A copy of the check(s) submitted must be sent simultaneously to the EPA representatives indicated in Paragraph VIII.T.45 (Notices) below.

b. Respondents may contest payment of any Future Response Costs under Paragraph VIII.G.13.a if they determine that the EPA has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. The Respondents agree to limit disputes concerning costs to accounting errors or costs inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the EPA pursuant to Section VIII.T.45 (Notices). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Respondents shall within the 60 day period pay all uncontested Future Response Costs to the EPA in the manner described in Paragraph VIII.G.13.a. Simultaneously, the Respondents shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future

-18-

Response Costs. The Respondents shall send to the EPA, as provided in Section VIII.T.45 (Notices), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondents shall initiate the Dispute Resolution procedures in Section VIII.O (Dispute Resolution). If the EPA prevails in the dispute, within 20 days of the resolution of the dispute, the Respondents shall pay the sums due (with accrued interest) to the EPA in the manner described in Paragraph VIII.G.13.a. If the Respondents prevail concerning any aspect of the contested costs, the Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the EPA in the manner described in Paragraph VIII.G.13.a; Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VIII.O (Dispute Resolution) or a complaint by EPA seeking reimbursement pursuant to this Order shall be the exclusive mechanisms for resolving disputes regarding the Respondents' obligation to reimburse the EPA for its Future Response Costs.

c. In the event that the payments required by Paragraph VIII.G.13.b are not made within 30 days of the Respondents' receipt of the bill, Respondents shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest on Future Response Costs shall begin to accrue on the date of the Respondents' receipt of the bill and Cost Summary or its future equivalent. Interest shall accrue at the rate specified through the date of the Respondents' payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Respondents' failure to make timely payments under this Section.

H. STIPULATED PENALTIES

14. a. Respondents shall be liable for stipulated penalties in the amounts set forth in Paragraphs VIII.H.14.B to the EPA for failure to comply with the requirements of this Order specified below, unless excused under Section VIII.N (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this Order or any final work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order

-19-

and within the specified time schedules established by and approved under this Order.

b. The following stipulated penalties shall be payable per violation per day to the EPA for any noncompliance identified below:

	<u>UP TO</u> <u>30 DAYS</u>	<u>30 TO</u> <u>60 DAYS</u>	<u>OVER</u> <u>60 DAYS</u>
Failure to submit periodic progress reports as required in the SOW and § VIII.D of the Order	\$250 per day	\$500 per day	\$1000 per day
Failure to comply with notice or other requirements of this Order.	\$250 per day	\$500 per day	\$1,000 per day
Failure to submit the following plans in accordance with approved schedules:	\$2,000 per day	\$4,000 per day	\$8,000 per day

Draft Response Action Activities Work Plan
 Draft Design Plans required in this SOW
 Methodology for Re-Evaluation of Groundwater Background Levels
 Final Response Action Activities Work Plan
 Final Design Plans required by this SOW
 Final Re-Evaluation of Groundwater Background Levels

Failure to submit any other plans required under the SOW.	\$1,000 per day	\$2,000 per day	\$4,000 per day
Failure to complete following activities in accordance with the approved schedules:	\$2,000 per day	\$4,000 per day	\$8,000 per day

Submit Final Design documents for the groundwater or soil vapor extraction and treatment systems;

Extend and maintain the site fencing during the life of this Order;

-20-

Complete the groundwater and soil vapor extraction and treatment pilot tests; and

Submit the Final Reports on the operation of the groundwater and soil vapor extraction and treatment pilot test.

Failure to take action to abate an endangerment	2,000 per day	3,000 per day	6,000 per day
Failure to comply with Notice of Release under Paragraph VIII.U.	20,000 per day	20,000 per day	20,000 per day

c. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

d. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may give Respondents written notification of the same and describe the noncompliance. This notice may indicate the amount of penalties due at that time as a result of EPA's knowledge of non-compliance by the Respondents. EPA may send the Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Respondents of a violation.

e. If Respondents' failed to comply with an Interim Milestone activity but have timely and accurately corrected the non-compliance and have not invoked the Dispute Resolution provisions for the related stipulated penalty then Respondents may request, in writing, that EPA allow the Respondents to delay payment of the stipulated penalty to EPA. EPA, in its sole discretion, not subject to dispute resolution or judicial review (unreviewable) may choose to delay Respondents' payment of such stipulated penalty for the Respondents' non-compliance with an Interim Milestone. If EPA notifies the Respondent that the Respondent may delay payment of the stipulated penalty to EPA then the Respondent will place the accrued penalties in an interest bearing escrow account in a federally insured bank duly chartered in the State of Michigan with disbursements from the escrow account payable to EPA on written demand. In the event that Respondents submit a Final Design (100%) Specifications and Drawings, significantly ahead of schedule and is approved by EPA when initially submitted, then EPA, in its sole, unreviewable discretion, may elect to reduce payment of any stipulated penalties or any portion thereof placed in the escrow account.

-21-

f. EPA, in its sole unreviewable discretion, may choose to not demand or to reduce the payment of a penalty which accrues pursuant to this Section. No waiver, forgiveness or reduction of penalty shall be effective unless expressly stated in writing by EPA.

g. All penalties owed to the United States under this section shall be due and payable within 45 days of the Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section VIII.O (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," and shall be mailed to the EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. The face of the check should note that the payment is for the Springfield Township site and the Site Number, A7. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section VIII.T (Notices). Respondents may dispute EPA's right to the stated amount provided they comply with the Dispute Resolution provisions of this Order.

h. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order.

i. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires.

j. If Respondents fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Respondents shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand at the rate established by the Department of Treasury pursuant to 31 U.S.C. § 3717. A handling charge will be assessed at the end of each thirty day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within ninety (90) days of the due date. Penalties shall be paid as specified in Paragraph VIII.H.14.g.

k. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

l. Payment of Stipulated Penalties will not relieve Respondents from complying with the terms of this Consent Order. EPA retains the right to seek any remedies or sanctions available to EPA by reason of Respondent's noncompliance with the provisions of this Consent Order that are not otherwise expressly limited by these Stipulated Penalty provisions.

m. Notwithstanding the above provisions, the Respondents shall have the right to petition the EPA for forgiveness of stipulated penalties that accrue during dispute resolution for items upon which they did not prevail, based on a finding (1) that the delay in Work or other violation that caused the stipulated penalty to accrue was necessary and appropriate during the dispute resolution proceeding, (2) that Respondents' position regarding the dispute had substantial support in law and fact and reasonably could have been expected to prevail, considering the applicable standard of review, and (3) that Respondent sought dispute resolution in accordance with the time periods allowed under the Dispute Resolution section and took all other appropriate steps to avoid any delay in Work as a result of the dispute. If EPA so finds, it may grant an appropriate reduction or waiver in the stipulated penalties that accrued during the dispute resolution period. Respondents shall have the burdens of proof and persuasion on any petition submitted under this provision.

15. Respondents shall not owe stipulated penalties for any items upon which they prevail in dispute resolution. Respondents may request a specific determination at each stage of dispute resolution as to the issues and items upon which they have prevailed and as to the amount of any stipulated penalties owed.

16. No extensions to the time frames in this Order shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by EPA.

I. INDEMNIFICATION/INSURANCE

17. a. The Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, department, agents, and employees, from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondents, its officers, employees, receivers, trustees, agents, successors or assigns, in carrying out the activities pursuant to this Order. The United States Government shall not be held as a party to any contract entered into by the Respondents in carrying out activities under this Order. The United States does not assume any liability by entering into this agreement. The Respondents agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Neither the Respondents nor

any of Respondents contractors shall be considered an agent of the United States.

b. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of the Respondents and any person for performance of Work required by this Order. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Respondents and any person for performance of Work required by this Order.

18. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the Termination and Satisfaction of this Order pursuant to Section VIII.AA (Termination and Satisfaction) comprehensive general liability insurance and automobile insurance with limits of 2 (two) million dollars, combined single limit naming as additional insured the United States and the State of Michigan. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. Prior to commencement of the Work under this Order, Respondents shall provide to EPA certificates of such insurance and, upon request by EPA, a copy of each insurance policy or endorsement. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. It is agreed that the required insurance may be supplied by an endorsement to an existing policy which meets the requirements of this paragraph.

19. Respondents shall provide financial security in the amount of one million (\$1,000,000) dollars, in one of the forms permitted under 40 CFR Part 264.145, including the form of audited financial statements which satisfy the substantive criteria thereof, to assure completion of the Work at the Facility.

J. WARRANTIES

20. The provision of the SOW, attached as Attachment B, reflect the Parties' best efforts at the time of execution of this Order to define the technical Work required to perform the response actions identified in the Purpose Section of this Order. The Parties acknowledge and agree that EPA's approval of the SOW or the final work plans does not constitute a warranty or representation of any kind that these response actions will achieve the Cleanup and Performance Standards specified in the ROD, and shall not foreclose the EPA or the State, in a separate action, from seeking compliance with the applicable Cleanup and Performance Standards specified in the ROD. The Parties agree that completion of the activities required by this Order will not abate all hazards present at the site. Furthermore, the Parties agree not to use the existence of this Order as an indication that all imminent and substantial endangerment from the release of hazardous substances at the site have been abated or that the ROD should or is to be amended

K. ADDITIONAL REMOVAL ACTIONS

21.a. In the event that EPA determines or the Respondents propose that additional removal actions are necessary to meet the work required by this Order or specified in the SOW written notification of such additional removal actions shall be provided to the Project Coordinator for the other party(ies).

b. Within 30 days of receipt of notice from EPA or Respondents pursuant to Paragraph VIII.K.21.a that additional removal actions are necessary (or such longer time as may be specified by EPA), Respondents shall submit for approval by EPA, a final work plan for the additional removal actions. The plan shall conform to the requirements specified by EPA as applicable. Upon approval of the plan pursuant to Section VIII.S (Submissions Requiring Agency Approval), Respondents shall implement the plan for additional removal actions in accordance with the schedule contained therein.

c. Any additional removal actions that Respondents propose as necessary to meet the Work required by this Order or specified in the SOW shall be subject to approval by EPA, and, if authorized by EPA, shall be completed by Respondents in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section VIII.S (Submissions Requiring Agency Approval).

d. Respondents may invoke the procedures set forth in Section VIII.O (Dispute Resolution) to dispute EPA's determination that additional removal actions are necessary to meet the Work required by this Order or specified in the SOW. Such a dispute shall be resolved pursuant to Paragraphs VIII.O of this Order.

-25-

L. EPA PERIODIC REVIEW

22. Nothing in this Order shall be considered to limit EPA's authority or duty to conduct periodic reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

M. RESERVATION OF RIGHTS

23. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

24. The EPA and the Respondents reserve all rights, claims, demands, and defenses, including defenses and denials of and to all determinations and findings, that they may have as to each other, except as otherwise provided in this Order, pursuant to any available legal authority. Notwithstanding any reservation of rights, Respondents agree to comply with the terms and conditions of this Order and consent to the jurisdiction of the EPA to enter into and enforce this Order.

25. Nothing herein is intended to release, discharge, limit or in any way affect any claim, causes of action or demands in law or equity which the parties may have against any persons, firm, trust, joint venture, partnership, corporation, or other entity not a party to this Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, disposal, release or threat of release of any Waste Material at or from the site. The parties to this Order hereby expressly reserve all rights, claims, demands and causes of action they may have against any and all other persons and entities who are not parties to this Order.

26. a. Nothing herein shall be construed: 1) to prevent EPA from exercising its right to disapprove of work performed by the Respondents; 2) to prevent EPA from seeking legal or equitable relief to enforce the terms of this order; 3) to prevent EPA from taking other legal or equitable action not inconsistent with the Covenant Not To Sue in paragraphs VIII.V.48-51 of this Order; 4) to prevent EPA from requiring the Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law; 5) to mean or imply that all imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances from the site has been abated upon successful completion of the terms and conditions of this Order; 6) to prevent EPA from undertaking response actions at the site; or 7) to prevent EPA from instituting a separate judicial or

administrative action requiring implementation of the remedial action required by the ROD for this site.

b. The EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Respondents to meet a requirement of this Order;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by all federal agencies which are trustees for natural resources and which have, or may in the future, spend funds relating to the Site;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the response actions;

(7) the right to institute judicial proceedings or to issue an administrative order seeking to compel Respondents: to perform further response actions, including but not limited to the remedial actions selected in the ROD, relating to the Site;

(8) the right to institute judicial proceedings to reimburse the United States for additional costs of response not covered by this Order, including, but not limited to past response costs not otherwise settled with the Respondents or those future response costs not reimbursed under the terms of this Order.

c. In the event EPA determines that Respondents have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section VIII.G (Response Costs) in addition to any stipulated penalty due as a result of the Respondents failure to comply.

d. Notwithstanding any other provision of this Order, the EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

N. FORCE MAJEURE

27. a. "Force majeure," for purposes of this Order, is defined as any event arising from causes beyond the control of the

-27-

Respondents or of any entity controlled by Respondents, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. The requirement that the Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

b. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, the Respondents shall notify orally EPA's Project Coordinator or, in her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region V, within 48 hours of when Respondents first knew or should have known that the event might cause a delay. Within 5 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event. Respondents shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

c. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Respondents in writing of its decision. If EPA agrees that the delay is attributable to

a force majeure event, EPA will notify the Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

d. If the Respondents elect to invoke the dispute resolution procedures set forth in Section VIII.O (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs VIII.N.27.a and b, above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Order identified to EPA.

O. DISPUTE RESOLUTION

28. The Parties to this Order shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order or any Work required hereunder.

29. In the event that any dispute arising under this Order on Consent is not resolved expeditiously through informal means, any party desiring dispute resolution under this Section shall give prompt written notice to the other parties to the Order.

30. Within ten (10) calendar days of the service of notice of dispute pursuant to Paragraph 29 above, the party who gave notice shall serve on the other parties to this Order a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). The opposing parties shall serve their Statement of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the complaining party's Statement of Position.

31. An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to the preceding paragraphs.

32. a. Upon review of the administrative record, the Director of the Waste Management Division, EPA, Region V, shall resolve the dispute consistent with the NCP and the terms of this Order.

-29-

If EPA does not concur with the position of the Respondent EPA will resolve the dispute consistent with the terms and objectives of this Order. The resolution of any dispute regarding this Order must be in writing and signed by EPA.

b. Respondents shall have the burden of demonstrating that the decision of the Waste Management Director is arbitrary and capricious or otherwise not in accordance with law in any enforcement proceeding brought by EPA to enforce the terms of this Order in relation to a decision of the Director on a dispute pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Order; and (2) the adequacy of the performance of response actions taken pursuant to this Order.

c. In any other enforcement proceeding brought by EPA to enforce the terms of this Order in relation to a decision of the Director on a dispute not covered by paragraph 32.b above judicial review shall be governed by applicable provisions of law.

33. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Respondents that have not been disputed in accordance with this Section. Nothing in this Order shall be construed to allow any dispute by Respondents regarding the validity of the response actions required by this Order or the clean-up standards required by the ROD.

34. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondents under this Order not directly in dispute, unless EPA agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph VIII.H.14.m. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. In the event that the Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII.H (Stipulated Penalties).

P. NON-ADMISSION

35. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of liability or admission or consent to any of EPA's findings or determinations contained in this Order in any proceeding other than a proceeding to enforce the terms of this Order.

Q. PRE-ENFORCEMENT REVIEW

36. No action or decision of U.S. EPA, including, without limitation decisions of the Regional Administrator, Director of the Waste Management Division or their designees, shall constitute final Agency action giving rise to any rights of judicial review, prior to EPA's initiation of judicial action to compel the Respondent to comply with the mandates of this Consent Order or to enforce a term, condition or other action required by this Consent Order. Nothing in this Order shall expand the Respondents' ability to obtain pre-enforcement review of EPA's actions.

R. CERCLA FUNDING

37. The Respondents waive any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. §9507 for, or arising out of, any activity performed or expenses incurred pursuant to this Consent Order.

38. This Consent Order does not constitute any decision on pre-authorization of funds under Section 111(a)(2) of CERCLA.

S. SUBMISSIONS REQUIRING AGENCY APPROVAL

39. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Order, EPA, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Respondents modify the submission; or (e) any combination of the above.

40. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 39(a), (b), or (c) above, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section VIII.O (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph VIII.S.39.c and the submission had a

material defect, EPA retains its right to seek stipulated penalties, as provided in Section VIII.H.

41. a. Upon receipt of a notice of disapproval pursuant to Paragraph 39(d), Respondent shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section VIII.H, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph VIII.S.39.d, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section VIII.H (Stipulated Penalties).

42. a. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Respondent shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section VIII.O (Dispute Resolution).

b. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Respondents invoke the dispute resolution procedures set forth in Section VIII.O (Dispute Resolution) and the Respondents prevail in the dispute. The provisions of Section VIII.O (Dispute Resolution) and Section VIII.H (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If the Director upholds the disapproval or modification, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required.

43. All plans, reports, and other items required to be submitted to EPA under this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

44. No informal advice, guidance, suggestions or comments by representatives of the EPA or the State on plans, reports or

-32-

other documents submitted by the Respondents shall be construed as relieving them from obtaining any formal approvals, permits or other authorizations required by law or by this Order. Further, no advice, guidance, suggestions or comments by such government representatives with respect to any submission by the Respondents shall be construed so as to relieve them of their obligations under this Order or to transfer any of their liability or obligations under this Order to any other Party or person.

T. NOTICES

45. A notice, document, information, report, plan, approval, disapproval or other correspondence required to be submitted from one party to another under the Order shall be deemed submitted either when hand delivered, delivered by overnight courier, or as of the postmark date mailed by certified mail, return receipt requested.

Submissions to the Respondents shall be submitted to:

Respondents shall, within fourteen (14) days of the effective date of this Order, specify in writing the names, addresses and telephone numbers of the individuals who shall receive the notices and material set forth in this section.

Submissions to the EPA shall be submitted to:

Marilou Martin (HSRW)
RPM
EPA, Region V
77 West Jackson
Chicago, IL 60604

Richard Clarizio (CS-3T)
Assistant Regional Counsel
EPA, Region V
77 West Jackson
Chicago, IL 60604

Submissions to the MDNR shall be submitted to:

Gene Hall
Superfund Section
Environmental Response Division
MDNR
KNAPP Office Center
300 South Washington
Lansing, Michigan 48933

EPA agrees that, to the extent possible, it will coordinate its schedule for on-site activities independent of this Order with the schedule of activities required by the Respondents under this Order.

U. IMMINENT AND SUBSTANTIAL ENDANGERMENT

46. In the event of any action by Respondents or the occurrence, as a result of Respondents activities, during the performance of the Work which causes or threatens a release of Waste Material from the Site that may constitute an imminent and substantial endangerment to public health or welfare or the environment, Respondents shall, subject to Paragraph VIII.U.47 immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Respondents shall notify the EPA Emergency Response Unit, Region V. Respondents shall take such immediate actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW.

47. Nothing in the preceding Paragraph or in this Order shall be deemed to limit any authority of the EPA, to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

V. COVENANT NOT TO SUE

48. In consideration of the actions that will be performed and the payments that will be made by the Respondents under the terms of the Order, and except as specifically provided in Paragraphs VIII.V.49 to 51, the EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA or 7003 of RCRA for performance of the Work required by this Order satisfactory to EPA and for recovery of Future Response Costs covered by this Order. These covenants not to sue shall take effect upon the effective date of this Order. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person. The covenants not to sue do not pertain to any matters other than those expressly specified in this Paragraph.

49. Respondents hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue

-34-

Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to this Order, or any claims arising out of response activities at the Site performed through May 31, 1991 or those performed pursuant to this Order. However, the Respondents reserve, and this Order is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Respondents plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Order shall be deemed to constitute pre-authorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

50. Notwithstanding any other provisions in this Order, the covenant not to sue in this Section shall not relieve the Respondents of their obligation to meet and maintain compliance with the requirements set forth in this Order, including the conditions in the SOW, which are incorporated herein, and the EPA reserves its rights to take response or enforcement actions at the Facility in the event of a breach of the terms of this Order and to seek recovery of costs incurred after the effective date of this Order: 1) resulting from such a breach; 2) relating to any portion of the Work funded or performed by the EPA; or 3) incurred by the EPA as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Facility or the Work required under this Order.

51. Nothing in this Order shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Order for any liability it may have arising out of or relating to the Facility. The EPA and each Respondent expressly reserve the right to continue to sue any person, other than the Parties, in connection with the Facility.

W. CONTRIBUTION PROTECTION

52. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Respondents and EPA expressly reserve any and all rights

-35-

(including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

53. With regard to claims for contribution against Respondents for matters addressed in this Order, the EPA and the Respondents hereto agree that the Respondents are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Respondents mutually covenant not to sue or assert claims or causes of action against one another, or to seek costs, damages or attorneys' fees from one another only for the activities covered by this Order.

54. a. The Respondents agree that with respect to any suit or claim for contribution brought by them for matters related to this Order they will notify the EPA in writing no later than 60 days prior to the initiation of such suit or claim.

b. The Respondents also agree that with respect to any suit or claim for contribution brought against them for matters related to this Order they will notify in writing the EPA within 10 days of service of the complaint on them. In addition, Respondents shall notify the EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

55. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII.V (Covenants Not to Sue).

X. SUBSEQUENT AMENDMENT

56. This Consent Order may be amended by mutual agreement of EPA and the Respondents. Any amendment of this Consent Order shall be in writing, signed by EPA and the Respondents and shall have as the effective date, that date on which such amendment is signed by EPA.

Y. ATTACHMENTS

57. The following documents are attached to and incorporated into this Order:

"Attachment A" is the ROD.

"Attachment B" is the SOW.

"Attachment C" is the complete list of the Respondents.

Z. COMMUNITY RELATIONS

58. Respondents shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Respondents under the Plan. Respondents shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

AA. TERMINATION AND SATISFACTION

59. a. Within 90 days after Respondents conclude that all phases of the work required by this Order have been fully performed, Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents, EPA and the State. If, after the pre-certification inspection, the Respondents still believe that the work has been fully performed, Respondents shall submit a written report by a registered professional engineer stating that the work has been completed in full satisfaction of the requirements of this Order. The report shall contain the following statement, signed by a responsible corporate official of a Respondent or the Respondents' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. If, after review of the written report, EPA, determines that the Work has not been completed in accordance with this Order, EPA will notify Respondents in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondents to submit a schedule to EPA for approval pursuant to Section

-37-

VIII.S (Submissions Requiring Agency Approval). Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section VIII.O (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Respondents that the work has been fully performed in accordance with this Order EPA will so notify the Respondents in writing.

d. The provisions of this Order shall be deemed satisfied, except for record retention required by Section VIII.E, upon payment by Respondents of all sums due under the terms of this Order and upon the Respondents' receipt of written notice from EPA that the Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks consistent with this Consent Order which EPA has determined to be necessary, have been completed. All duties, except for record retention required by Section VIII.E, shall be considered terminated upon respondents receipt of EPA's notice of satisfaction of the terms of this Order. Neither the fact of termination of this Order nor the Notice of Termination shall be interpreted to mean that all imminent and substantial endangerment of the release of hazardous waste or hazardous constituents have been abated at the site.

BB. EFFECTIVE DATE

60. This Order shall be effective on the date of Signature of the Director of the Waste Management Division.

CC. SEVERABILITY

61. If any provision of this Order is deemed invalid or unenforceable, the remainder of this Order shall remain in full force and effect.

DD. SIGNATORIES

62. Signatures of each Settling Party will be on separate pages following this Consent Order beneath the statement "The Undersigned Settling Party hereby certifies that the undersigned Officer has authority to bind the undersigned Settling Party to this Consent Order."

63. Each Respondent shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to

-38-

this Order. Respondents hereby agree to accept service in that manner.

The above being agreed and consented to, it is so Ordered

this 20th day of March, 1992.

By David A. Ullrich
David A. Ullrich, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V